IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 2ND AUGUST 2006 / 11TH SRAVANA 1928

WP(C).No. 100 of 2006(J)

PETITIONER:

T.K.DROUPATHY, ,MANAGER, VANIYAMKULAM
T.R.K. HIGH SCHOOL, VANIYAMKULAM, PALAKKAD DIST.

BY ADV. SRI.K.RAMAKUMAR

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY THE
CHIEF SECRETARY, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF EDUCATION, GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM.

3. THE DIRECTOR OF PUBLIC INSTRUCTIIONS,
THIRUVANANTHAPURAM.

4. THE MANAGER,
PANYOOR, T.M.U.P.SCHOOL, PANAYOOR,
OTTAPPALAM EDUCATIONAL DISTIRCT, PALAKKAD.

5. THE DISTRICT EDUCATIONAL OFFICER,
OTTAPPALAM.

BY ADV. SRI.A.A.ABUL HASSAN

GOVT.PLEADER SRI.P.V.LONACHAN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02/08/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.K. Basheer, J.

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W.P(C) No. 100 of 2006-J

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Dated this the 2nd day of August , 2006.

J U D G M E N T

Petitioner is stated to be the Manager of an aided High School situated about 1.8 km. away from the Upper Primary School managed by respondent No.4. It appears that the application submitted by respondent No.4 for upgradation of his U.P. school as a High School is pending consideration before the Government.

2. Petitioner takes exception to the proposal for upgradation primarily on the ground that in the event of upgradation, his school may lose students and resultantly division fall may occur. Petitioner has further alleged that respondent No.4 is likely to walk away with an order of upgradation because of the "tremendous influence" commanded by him in the Ministry of Education. Petitioner has further contended that the educational authorities would not be justified in recommending upgradation.

3. The primary prayer in this writ petition is to issue a writ of mandamus or such other appropriate writ, order or direction to respondents 1 to 3 to afford him an opportunity of hearing before any orders on the request of upgradation is passed by the Government. There is a further prayer to interdict respondent No.5, the District Educational Officer, Ottappalam from sending any report in obedience to the directions issued by his superior officer, Director of Public Instruction, Thiruvananthapuram without hearing him.

4. Having heard learned counsel for the petitioner and learned counsel for contesting respondent No.4, I have no hesitation to hold

that the contentions raised by the petitioner are totally misconceived and untenable. Of course, the question whether upgradation is to be granted or not to the school of respondent No.4 is entirely left to the discretion of the Government. It cannot be assumed that the competent authority which is supposed to pass the order would be oblivious of the statutory mandates and other relevant aspects of the issue, if and when such an order is to be passed. The mere possibility that petitioner's school is likely to lose student strength in the event of upgradation of the school of respondent no.4, cannot be a reason to give him an opportunity to be heard before any orders are passed by the competent authority.

5. Learned counsel for respondent no.4 has invited my attention to the decisions of their Lordships of the Supreme Court in ***J.M. Desai v. Roshan Kumar*** (AIR 1976 SC 578) and ***Punnose v. Nair Service Society*** (1984 KLT 736) in this connection. It has been held in the above decisions that the ground of objection that the number of students in the existing school run will be reduced on upgradation of another school in the neighborhood cannot be countenanced.

6. Having regard to the entire facts and circumstances the contentions raised by the petitioner cannot be sustained.

Writ Petition fails and it is accordingly dismissed.

A.K. Basheer
Judge.

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